

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DR. RALPH S. BEREN, ED.D.,

No. C-06-4706 MMC

Plaintiff,

**ORDER DENYING LETTER REQUEST  
FOR EXTENSION OF TIME TO FILE  
THIRD AMENDED COMPLAINT**

v.  
BOARD OF TRUSTEES OF CALIFORNIA  
STATE UNIVERSITY, et al.,

Defendants

By order filed June 11, 2007, the Court dismissed each of the eight causes of action alleged in plaintiff's Second Amended Complaint, and afforded plaintiff leave to file, no later than June 29, 2007, a Third Amended Complaint ("TAC"). In so doing, the Court stated as follows: "Leave to amend is provided solely to afford plaintiff leave to set forth the factual basis for the legal claims set forth in the First, Third, and Fourth Causes of Action. If plaintiff seeks to amend for any other purpose, plaintiff must file a motion to amend, pursuant to Rule 15(a)." (See Order, filed June 11, 2007, at 4:23 - 5:1.)

The Court is in receipt of a letter, filed June 25, 2007, in which plaintiff requests a two-week extension of time to file a TAC, for the stated reason plaintiff is "waiting for an amended Right to Sue Letter from DFEH," which he expects to receive in the next two weeks; plaintiff states he "would like to include the filing and the grant of the amended right

1 to sue in the new Complaint."<sup>1</sup> Defendants Board of Trustees of California State University  
2 and Nathan Avani have filed opposition to plaintiff's request.

3 As defendants point out, the reason given for plaintiff's request for an extension of  
4 time has no relation to the First, Third, and Fourth Causes of Action, each of which is a  
5 federal claim for which no exhaustion is required. An amendment stating that plaintiff has  
6 exhausted his administrative remedies would pertain solely to one or more of plaintiff's  
7 state law claims, and the Court did not afford plaintiff leave to amend any of his state law  
8 claims.<sup>2</sup>

9 Accordingly, plaintiff's letter request for an extension of time to file a TAC is hereby  
10 DENIED.

11 **IT IS SO ORDERED.**

12  
13 Dated: June 28, 2007

  
MAXINE M. CHESNEY  
United States District Judge

21  
22 <sup>1</sup>The Court ordinarily does not act on letter requests. Counsel shall submit any  
23 future requests for relief by motion filed in accordance with the Federal Rules of Civil  
Procedure and the Civil Local Rules of this district. See, e.g., Civil L.R. 6-3 (providing  
party may file "motion to change time").

24 <sup>2</sup>As noted, the Court stated plaintiff must file a motion for leave to amend if he  
25 sought to amend for any reason other than to set forth the factual basis for his federal  
claims. In that respect, defendants argue, an amendment alleging exhaustion of state  
26 administrative remedies in 2007 would be futile because the conduct at issue occurred in  
2005. See Cal. Gov't Code § 12960(d) (providing, subject to specified exceptions,  
27 administrative claim must be filed within one year of "alleged unlawful practice"). If plaintiff  
files a motion seeking leave to amend to allege he has exhausted his state administrative  
28 remedies, plaintiff must, inter alia, set forth why such amendment would not be futile in light  
of § 12960(d).